



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 27 2003

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable James M. Jeffords
Ranking Member
Committee on Environment
and Public Works
United States Senate
Washington, DC 20510

Dear Senator Jeffords:

I am writing to follow-up on my September 30, 2003 and October 17, 2003 letters concerning your request for EPA documents and analyses. I have had the opportunity to communicate directly with your staff on multiple occasions since my first letter, and I am pleased that we have continued to make progress in addressing many of your requests.

With this letter I am addressing several outstanding issues. Most importantly, I can report that we are nearing completion of an analysis of the estimated benefits of the Clean Power Act (S.366) and the Clean Air Planning Act of 2003 (S. 843). I am also providing a written status report on EPA's response to your request for documents related to the New Source Review regulations, as well as an explanation of privileges that apply to those documents. Although I have provided periodic updates on the document collection process since first addressing this matter in my letter of September 30, 2003, I am providing this written status report at the request of your staff.

By way of background, your original request asked that EPA produce NSR documents in a wide range of categories. After meeting with your staff to clarify the description of documents you were seeking, EPA held intra-agency discussions with representatives of all offices that might possess the types of documents you requested. In those discussions, we identified more than 60 EPA employees in the relevant offices who would either possess documents responsive to your request, or would collect responsive documents from any other employees who had worked on the NSR rule and who had responsive documents.

Starting in early February of 2002, we sent memos to these identified employees explaining the process and including the substance of your December 14, 2001 letter as well as the agreed upon clarifications of the scope of the request. This process was followed up by periodic new requests, in June 2002, October 2002, May 2003 and most recently September 2003 for responsive documents beyond the cut-off date of each previous request. Employees were requested to submit hard copy of all documents, which were then reviewed to assure responsiveness to your request and to identify any privilege that might attach to each document.

As soon as collection and review of each set of documents were completed, those documents identified as responsive were conveyed to the Committee throughout the year in installments, as described in more detail in our September 25, 2002 letter to you. A number of the documents identified as responsive were also determined to be privileged, and those were sent to you as Chairman of the Committee on Environment and Public Works, with appropriate privilege markings, or shared with your staff in a series of review sessions at the Agency.

Please note that our most recent collection of documents covering September 30, 2002 to September 13, 2003, has resulted in a set of documents that are not subject to release because they are internal, privileged material, or enforcement sensitive. Although we are still in the process of collecting documents, the documents identified as of the date of this letter fall into the following categories:

1. E-mails and internal memoranda related to information used to develop documents (e.g., Information Collection Request (ICR) and Regulatory Impact Analyses (RIA)) associated with the NSR Improvement Rule finalized on December 31, 2002 and the NSR Routine Maintenance, Repair and Replacement Rule (RMRR) finalized on August 27, 2003.
2. Draft documents containing data, preliminary analyses and related information used in the development of the ICR, RIA and the qualitative emissions impact analyses for the NSR Improvement Rule finalized on December 31, 2002 and the NSR Routine Maintenance, Repair and Replacement Rule (RMRR) finalized on August 27, 2003.
3. Internal briefing documents, analyses and draft sections of the preamble for the NSR Improvement Rule finalized on December 31, 2002 and the NSR Routine Maintenance, Repair and Replacement Rule (RMRR) finalized on August 27, 2003 addressing the legal basis, enforcement aspects, and other elements of these rules.

These documents are being withheld under 5 U.S.C. §552(b)(5) because they are inter- or intra-agency communications protected by the deliberative process privilege; they reflect internal advice and discussions that are being considered during EPA's decision-making process. Release of these withheld documents would discourage open and frank discussions between executive branch personnel during the decision-making process. Certain of these documents are also covered by the attorney-client privilege and/or the attorney work-product privilege.

4. The Office of General Counsel has collected documents including e-mails, briefing papers, draft legal rationales, and comments on non-OGC draft documents relating to various NSR rules, including the NSR Improvement Rule finalized on December 31, 2002, and the NSR Routine Maintenance, Repair and Replacement Rule finalized on August 27, 2003.

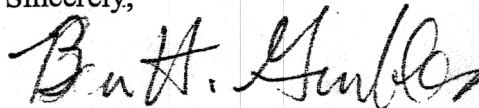
These documents are being withheld under 5 U.S.C. §552(b)(5) because they are inter- or intra-agency communications protected by the attorney-client privilege; they reflect either confidential communications between attorneys and their clients or confidential communications among attorneys based on client-supplied information. Release of these withheld documents would discourage open and frank discussions among executive branch attorneys, and between executive branch attorneys and their clients, which could impact the quality of legal advice provided to such clients. Certain of these documents are also covered by the deliberative process privilege, the attorney work-product privilege, and/or 5 U.S.C. §552(b)(7).

5. The Office of Regulatory Enforcement within the Office of Enforcement and Compliance Assurance has collected documents including e-mails, draft litigation documents, and drafts of reports analyzing the impacts on EPA NSR enforcement, including its impact on enforcement cases, resulting from the adoption of the NSR Routine Maintenance, Repair and Replacement Rule finalized on August 27, 2003.

These documents are being withheld under 5 U.S.C. §552(b)(7) because release could reasonably be expected to interfere with enforcement proceedings or would disclose law enforcement techniques, procedures, or guidelines where disclosure would risk circumvention of the law. Certain of these documents are also covered by the deliberative process privilege and/or the attorney work-product privilege, 5 U.S.C. §552(b)(5).

Again, thank you for the opportunity to respond further to your requests. Please contact me if I can be of further assistance, or your staff may contact Catherine Sulzer on 202-564-2464.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben H. Grumbles". The signature is fluid and cursive, with the first name "Ben" and last name "Grumbles" clearly distinguishable.

Benjamin H. Grumbles
Acting Associate Administrator